

1
2 **RENNE PUBLIC LAW GROUP**
3 LOUISE H. RENNE (SBN 36508)
lrenne@publiclawgroup.com
4 RUTH M. BOND (SBN 214582)
rbond@publiclawgroup.com
5 STEVE CIKES (SBN 235413)
scikes@publiclawgroup.com
350 Sansome St., Suite 300
6 San Francisco, CA 94104
Telephone: (415) 848-7200
7 Facsimile: (415) 848-7230

8 **COHEN MILSTEIN SELLERS & TOLL**
9 **PLLC**
10 JULIE GOLDSMITH REISER (*pro hac vice*)
jreiser@cohenmilstein.com
11 MOLLY BOWEN (*pro hac vice*)
mbowen@cohenmilstein.com
12 LYZETTE WALLACE (*pro hac vice*)
lwallace@cohenmilstein.com
13 1100 New York Ave. NW, 5th Floor
Washington, DC 20005
Telephone: (202) 408-4600
Facsimile: (202) 408-4699

14 LAURA POSNER (*pro hac vice*)
lposner@cohenmilstein.com
15 88 Pine St., 14th Floor
New York, NY 10005

16 Counsel for Interim Lead Plaintiff the
17 Employees' Retirement System of Rhode Island

18 **BOTTINI & BOTTINI, INC.**
19 FRANCIS A. BOTTINI, JR. (SBN 175783)
fbottini@bottinilaw.com
20 La Jolla, California 92037
Telephone: (858) 914-2001
21 Facsimile: (858) 914-2002

22 Counsel for Interim Executive Committee
23 Plaintiff Sal Toronto

24
25 **WEISSLAW LLP**
JOSEPH H. WEISS (*pro hac vice*)
jweiss@weisslawllp.com
1500 Broadway, 16th Floor
New York, NY 10036
Telephone: (212) 682-3025
Facsimile: (212) 682-3010

26 Counsel for Interim Executive Committee Plaintiff
Stephen Bushansky

27 **FRESHFIELDS BRUCKHAUS DERINGER US**
28 **LLP**
BORIS FELDMAN, (SBN 128838)
boris.feldman@freshfields.com
DORU GAVRIL, (SBN 282309)
doru.gavril@freshfields.com
DREW LIMING, (SBN 305156)
drew.liming@freshfields.com
2710 Sand Hill Road
Menlo Park, CA 94025
Telephone: (650) 618-9250

29 MARY EATON (*pro hac vice*)
mary.eaton@freshfields.com
601 Lexington Avenue, 31st Floor
New York, NY 10022
Telephone: (212) 277-4000

30 Counsel for Nominal Defendant Pinterest, Inc. and
31 Individual Defendants Benjamin Silbermann, Jeffrey
32 Jordan, Leslie J. Kilgore, Jeremy S. Levine, Gokul
33 Rajaram, Fredric G. Reynolds, Evan Sharp, Todd
34 Morgenfeld, and Michelle Wilson

35
36 **UNITED STATES DISTRICT COURT**
37 **NORTHERN DISTRICT OF CALIFORNIA**
38 **SAN FRANCISCO DIVISION**

39
40 IN RE PINTEREST DERIVATIVE
41 LITIGATION

42 Lead Case No: 3:20-cv-08331-WHA

43 Date: March 18, 2021
44 Time: 11:00 am
45 Courtroom: 12, 19th Floor
46 Judge: Hon. William Alsup

JOINT CASE MANAGEMENT STATEMENT

2 Plaintiff The Employees' Retirement System of Rhode Island ("ERSRI" or "Interim Lead
3 Plaintiff"), Plaintiff Stephen Bushansky ("Bushansky" or "Interim Executive Committee Plaintiff"),
4 and Plaintiff Sal Toronto, Trustee of the EllieMaria Toronto ESA ("Toronto" or "Interim Executive
5 Committee Plaintiff") (together, "Plaintiffs"), Nominal Defendant Pinterest, Inc. ("Pinterest" or the
6 "Company"), and Individual Defendants Benjamin Silbermann, Evan Sharp, Todd Morgenfeld,
7 Jeremy Levine, Jeffrey Jordan, Gokul Rajaram, Fredric Reynolds, Leslie Kilgore, and Michelle
8 Wilson (together, "Individual Defendants"; collectively with Pinterest, "Defendants") (Plaintiffs and
9 Defendants are, collectively, the "Parties") in the above-captioned consolidated case (the
10 "Consolidated Case") hereby jointly submit this Joint Case Management Statement pursuant to the
11 Standing Order for All Judges of the Northern District of California, the Supplemental Order to Order
12 Setting Initial Case Management Conference in Civil Cases Before Judge Alsup, and Civil Local Rule
13 16-9, in anticipation of the Case Management Conference set for March 18, 2021 at 11:00 a.m.

1. JURISDICTION AND SERVICE

15 Plaintiffs assert claims derivatively on behalf of Pinterest, Inc. (“Pinterest” or the “Company”),
16 including claims arising under Section 14(a) of the Securities Exchange Act of 1934 (the “Exchange
17 Act”) and Rule 14a-9 promulgated thereunder. The Court has subject matter jurisdiction pursuant to
18 28 U.S.C. § 1331 because Plaintiffs allege a claim under the Exchange Act. The Court has
19 supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1337. Additionally, the
20 Court has subject matter jurisdiction under 28 U.S.C. § 1332 because Plaintiffs and Defendants are
21 citizens of different states and the amount in controversy exceeds the sum or value of \$75,000,
22 exclusive of interest and costs.

23 ||| Venue is appropriate in this District pursuant to 28 U.S.C. § 1391.

24 All Defendants have been served or waived service, and have entered an appearance.

2. FACTS

26 Plaintiffs, who are all shareholders in Pinterest, Inc., filed three verified shareholder derivative
27 complaints purportedly on behalf of nominal defendant Pinterest. *See* 3:20-cv-08331, ECF No. 1 (the
28 “*Bushansky* action”), 3:20-cv-08438, ECF No. 1 (the “*ERSRI* action”), and 3:20-cv-09390, ECF No.

1 1 (the “*Toronto* action”) (the “Related Cases”). After the Court consolidated the Related Cases,
 2 Plaintiffs filed a consolidated complaint (the “Consolidated Complaint”). In the Consolidated
 3 Complaint, Plaintiffs asserted claims for (1) breach of fiduciary duty, (2) waste of corporate assets, (3)
 4 abuse of control, (4) unjust enrichment, and (5) violations of Section 14(a) of the Exchange Act and
 5 Rule 14a-9. Plaintiffs did not make a demand on Pinterest before filing their Consolidated Complaint,
 6 alleging that such demand would have been futile.

7 Pinterest is incorporated in the State of Delaware, and its law governs Plaintiffs’ standing to
 8 assert this lawsuit in the Company’s name. The Company believes demand was not futile and, as a
 9 result, Plaintiffs lack derivative standing to assert any claims on Pinterest’s behalf. In addition, the
 10 Individual Defendants deny all of Plaintiffs’ allegations, which the Individual Defendants believe fail
 11 to state a claim.

12 **3. LEGAL ISSUES**

13 The principal legal issues in dispute in this action include:

- 14 1. Whether Plaintiffs have standing to bring a derivative action on behalf of Pinterest and/or
 whether Plaintiffs have adequately alleged demand futility;
- 15 2. Whether Plaintiffs have adequately alleged each element of their claims under Section 14(a)
 of the Exchange Act;
- 16 3. Whether Plaintiffs have adequately alleged a claim for breach of fiduciary duties;
- 17 4. Whether Plaintiffs have adequately alleged a claim for waste of corporate assets;
- 18 5. Whether Plaintiffs have adequately alleged a claim for abuse of control;
- 19 6. Whether Plaintiffs have adequately alleged a claim for unjust enrichment;
- 20 7. Whether the Individual Defendants have damaged the Company and, if so, the proper measure
 of such damages; and
- 21 8. Whether Defendants are entitled to judgment in their favor on Plaintiffs’ claims in whole or in
 part based upon any affirmative defenses they may assert.

22 **4. MOTIONS**

- 23 1. *Motions to File Under Seal:* Motions have been filed by the plaintiff in each of the Related
 Cases seeking to seal portions of the complaint filed in each that case. *Bushansky* action, ECF

1 No. 3; *ERSRI* action, ECF No. 3; *Toronto* action, ECF No. 4. The portions of the complaints
 2 for which sealing was sought contain material produced by Pinterest subject to confidentiality
 3 agreements between each plaintiff and Pinterest and designated Confidential by Pinterest. *Id.*
 4 In the *Bushansky* and *ERSRI* actions, the Court has issued orders granting in part and denying
 5 in part the motions to file under seal. *Bushansky* action, ECF No. 30; *ERSRI* action, ECF No.
 6 39. The *Bushansky* and *ERSRI* complaints were refiled in accordance with the Court's order.
 7 *Bushansky* action, ECF No. 35; *ERSRI* action, ECF No. 42. The motion to file under seal in
 8 the *Toronto* case was granted on February 12, 2021, and the *Toronto* complaint was refiled in
 9 accordance with the Court's order. *Toronto* action, ECF Nos. 31 & 32. Plaintiffs filed a motion
 10 to seal portions of the Consolidated Complaint on February 26, 2021. ECF No. 53.

- 11 2. *Motions to Relate Cases*: On November 30, 2020, after filing its complaint, *ERSRI* filed an
 12 administrative motion to consider whether the *Bushansky* and *ERSRI* actions should be related.
 13 *Bushansky* action, ECF No. 18. On December 10, 2020, the Court entered an order relating the
 14 two actions. *Bushansky* action, ECF No. 28. On January 5, 2021, after the filing of the *Toronto*
 15 complaint, Defendants filed an administrative motion to consider whether the *Toronto* case
 16 should be related to the *Bushansky* and *ERSRI* actions. *Bushansky* action, ECF No. 38. On
 17 January 7, 2021, the Court entered an order relating the three actions. *Bushansky* action, ECF
 18 No. 39.
- 19 3. *Pro Hac Vice Motions*: Motions to appear *pro hac vice* have been filed and granted by the
 20 Court for each attorney currently planning to appear before this Court who was not already
 21 admitted.
- 22 4. *Motions to Consolidate Cases*: On December 22, 2020, *Bushansky* and *ERSRI* filed a motion
 23 to (1) consolidate the *Bushansky* and *ERSRI* actions; (2) appoint *Bushansky* and *ERSRI* as
 24 interim co-lead plaintiffs; and (3) appoint Cohen Milstein Sellers & Toll PLLC and Weiss Law
 25 LLP as interim co-lead counsel and the Renne Public Law Group as interim liaison counsel.
 26 *Bushansky* action, ECF No. 33. On January 12, 2021, after the filing of the *Toronto* Complaint,
 27 *Bushansky* and *ERSRI* filed a reply in support of the motion to consolidate and appoint lead
 28 plaintiffs and counsel. *Bushansky* action, ECF No. 40.

1 On January 14, 2021, Toronto filed an administrative motion to enlarge time for filing an
 2 opposition to and continue the hearing on the motion to consolidate and appoint lead plaintiffs
 3 and counsel. *Bushansky* action, ECF No. 41. The Parties subsequently met and conferred, and,
 4 on January 19, 2021, the Parties filed a joint stipulation outlining a schedule for the briefing
 5 and hearing on Plaintiffs' cross-motions for consolidation and appointment of interim lead
 6 plaintiffs and counsel. *Bushansky* action, ECF No. 42. In that joint stipulation, the Parties also
 7 stated that Toronto had agreed to withdraw his administrative motion, effective upon the
 8 Court's approval of the joint stipulation. *Id.* On January 20, 2021, the Court entered its order
 9 approving the joint stipulation. *Bushansky* action, ECF No. 43.

10 On January 21, 2021, the Parties filed a joint stipulation regarding consolidation and case
 11 leadership (the "Joint Stipulation"). *Bushansky* action, ECF No. 46. The Parties agreed that the
 12 *Bushansky* action, *ERSRI* action, and *Toronto* action involve common questions of law and
 13 fact and assert substantially similar derivative claims against certain members of Pinterest's
 14 Board and certain executives so consolidation would result in substantial savings of judicial
 15 effort. The Plaintiffs further stipulated to a proposed case leadership structure seeking
 16 appointment of *ERSRI* as Interim Lead Plaintiff and *Bushansky* and *Toronto* as Interim
 17 Executive Committee Plaintiffs and seeking appointment of Cohen Milstein Sellers & Toll
 18 PLLC ("Cohen Milstein") as Interim Lead Counsel, WeissLaw LLP ("WeissLaw") and Bottini
 19 & Bottini, Inc. ("Bottini & Bottini") as Interim Executive Committee Counsel, and the Renne
 20 Public Law Group as Interim Liaison Counsel. On February 19, 2021, the Court granted the
 21 Joint Stipulation. ECF No. 49.

22 **5. AMENDMENT OF PLEADINGS**

23 Plaintiffs filed the Consolidated Complaint on February 26, 2021. ECF No. 54.

24 **6. EVIDENCE PRESERVATION**

25 The Parties have reviewed the Guidelines Relating to the Discovery of Electronically Stored
 26 Information ("ESI Guidelines") and the ESI Checklist For Use During the Rule 26(f) Meet and Confer.
 27 The Parties have met and conferred and are taking reasonable and proportionate steps to preserve
 28 evidence relevant to the issues reasonably evident in this action.

1 Under both federal law and Delaware law, discovery is stayed until Plaintiffs establish they
 2 have derivative standing to assert claims on Pinterest's behalf. Because the action asserts claims under
 3 the federal Exchange Act, discovery is stayed at the pleadings stage. 15 U.S.C. Section 78u-
 4 4(b)(3)(B). Courts in this District have recognized that Delaware law provides the same for
 5 shareholder derivative claims at the pleadings stage. *See Beam v. Stewart*, 845 A.2d 1040, 1056 (Del.
 6 2004) ("derivative plaintiffs are not entitled to discovery in order to demonstrate demand futility"); *In*
 7 *re Openwave Sys. S'holder Deriv. Litig.*, 503 F. Supp. 2d 1341, 1353 (N.D. Cal. 2007) (staying
 8 discovery "until such time as plaintiffs are able to meet the requirements of Rule 23.1").

9 **7. INITIAL DISCLOSURES**

10 As noted above, discovery is stayed unless and until the Court finds Plaintiffs have derivative
 11 standing to assert claims on Pinterest's behalf. Accordingly, the Parties have not yet exchanged initial
 12 disclosures.

13 **8. DISCOVERY**

14 No formal discovery has taken place, and as noted above, discovery is stayed unless and until
 15 the Court finds Plaintiffs have derivative standing to assert claims on Pinterest's behalf.

16 However, prior to filing complaints, Plaintiffs served books and records inspection demands
 17 on Pinterest pursuant to 8 Del. C. § 220 and obtained internal Company documents, which documents
 18 were relied on when drafting the complaints.

19 In light of the discovery stay, the Parties believe it is premature to propose a discovery schedule
 20 at this time.

21 The Parties do not anticipate the need to modify any of the discovery limitations provided by
 22 the Federal Rules of Civil Procedure. The Parties agree to work together in an effort to enter into a
 23 stipulated e-discovery order that will adequately address the review and production of electronically
 24 stored information.

25 **9. CLASS ACTIONS**

26 This action is not brought as a class action. No motion for class certification will be filed.

27 **10. RELATED CASES**

1 Other than the Consolidated Case, the parties are not aware of any other related cases filed in
2 this district.

3 On February 9, 2021, a shareholder derivative complaint was filed in the District of Delaware
4 containing certain similar allegations against the same defendants as the Consolidated Case, but
5 absent allegations based on confidential information produced by the Company. *See Mosquera v.*
6 *Silbermann, et al.*, No. 1:21-cv-00173 (D. Del.). That case was voluntarily dismissed and closed on
7 February 24, 2021.

8 **11. RELIEF**

9 Plaintiffs seek a judgment against all of the Individual Defendants and in favor of Pinterest
10 granting declaratory, injunctive, and monetary relief. Plaintiffs seek a declaration, among other
11 things, that (1) the action is maintainable as a shareholder derivative action under Federal Rule of
12 Civil Procedure 23.1 and that Plaintiffs are adequate derivative plaintiffs; (2) demand on the current
13 Board is excused because such demand would be futile; (3) the Individual Defendants violated the
14 Exchange Act, breached and/or aided and abetted the breach of their fiduciary duties to Pinterest,
15 committed corporate waste, and were unjustly enriched; and (4) Defendants Silbermann and Sharp
16 abused their control. Plaintiffs additionally seek (1) injunctive relief directing all Individual
17 Defendants and Pinterest to take all necessary actions to reform and improve Pinterest's corporate
18 governance procedures to comply with applicable laws and to protect Pinterest and its shareholders
19 from a repeat of the misconduct alleged in the complaints; (2) a judgment against the Individual
20 Defendants and in favor of Pinterest for the amount of damages sustained by the Company or which
21 will be sustained as a result of the Individual Defendants' alleged violations of law, along with pre-
22 and post-judgment interest as allowed by law; (3) extraordinary equitable and/or injunctive relief
23 including attaching, impounding, imposing a constructive trust on, or otherwise restricting the
24 proceeds of the Individual Defendants' trading activities or other assets to ensure Plaintiffs on behalf
25 of Pinterest have an effective remedy; (4) restitution and disgorgement of profits, benefits, and other
26 compensation; (5) punitive damages; (6) their reasonable attorneys' fees, experts' fees, and other
27 reasonable costs and expenses; and (7) other and further relief that this Court may deem just and
28 proper.

1 The Individual Defendants do not believe Plaintiffs are entitled to any relief and will seek
2 their legal fees, costs, and other expenses, to the extent permitted by applicable law.

3 **12. SETTLEMENT AND ADR**

4 The parties have not engaged in ADR discussions, consistent with the Court's preferences.

5 **13. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

6 At this time, the Parties do not consent to have a magistrate judge conduct all further
7 proceedings.

8 **14. OTHER REFERENCES**

9 The case is not suitable for reference to binding arbitration, a special master, or the Judicial
10 Panel on Multidistrict Litigation.

11 **15. NARROWING OF ISSUES**

12 At the present time, there are no issues that could be narrowed by agreement or by motion.

13 **16. EXPEDITED TRIAL PROCEDURE**

14 The Parties do not propose that this case proceed under General Order 64 Attachment A's
15 Expedited Trial Procedure.

16 **17. SCHEDULING**

17 Defendants intend to move to dismiss the Consolidated Complaint. The Parties have met and
18 conferred and are concurrently submitting a stipulation proposing the following schedule for briefing
19 Defendants' motions to dismiss:

20 1. Defendants shall file their motions to dismiss the Consolidated Complaint on or by
21 April 22, 2021.

22 2. Plaintiffs shall file their oppositions to the motions to dismiss on or by May 27, 2021.

23 3. Defendants shall file their replies in support of their motions to dismiss on or by June
24 17, 2021.

25 **18. TRIAL**

26 Plaintiffs request a jury trial of all triable issues and estimate that the trial will take two to
27 three weeks.

1 Defendants' position is that whether the case is triable by jury depends on the claims, if any,
 2 that remain in the case after the pleadings stage.

3 **19. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

4 Pursuant to Local Rule 3-15(a)(2), Plaintiffs filed certificates of interested entities. *See*
 5 *Bushansky*, No. 3:20-cv-08331, ECF No. 2; *ERSRI*, No. 3:20-cv-08438, ECF No. 2; *Toronto*, No.
 6 3:20-cv-09390, ECF No. 2. Besides the persons and entities identified in such certifications, no other
 7 entities have either (a) a financial interest in the subject matter in controversy or in Plaintiff or (b) any
 8 other kind of interest that could be substantially affected by the outcome of this proceeding.

9 Pinterest also filed certificates of interested entities in each of the Related Cases before they
 10 were consolidated. *See Bushansky*, No. 3:20-cv-08331, ECF No. 6; *ERSRI*, No. 3:20-cv-08438, ECF
 11 No. 12; *Toronto*, No. 3:20-cv-09390, ECF No. 11. Besides the Defendants and entities identified in
 12 such certifications, no other entities have either (a) a financial interest in the subject matter in
 13 controversy or in Pinterest or (b) any other kind of interest that could be substantially affected by the
 14 outcome of this proceeding.

15 **20. PROFESSIONAL CONDUCT**

16 All attorneys of record for the Parties have reviewed the Guidelines for Professional Conduct
 17 for the Northern District of California.

18 **21. PLANS TO PROVIDE OPPORTUNITIES TO JUNIOR LAWYERS**

19 Of the four law firms representing plaintiffs, only one (Cohen Milstein) has more than 50
 20 lawyers. As to Cohen Milstein, at this early stage it is not possible to identify specific motions that
 21 will be necessary or precise depositions that will be taken but the firm anticipates that Molly Bowen,
 22 associate at Cohen Milstein and J.D. class of 2013, and Josh Handelsman, associate at Cohen Milstein
 23 and J.D. class of 2017, will be given opportunities to: argue discovery motions and portions of
 24 dispositive motions; take depositions of some fact witnesses, including current and former Pinterest
 25 employees who were allegedly the targets of discrimination and retaliation; lead portions of
 26 presentations at settlement negotiations; and examine some witnesses at trial, including current and
 27 former Pinterest employees who were allegedly the targets of discrimination and retaliation.

1 Counsel for Defendants intend to provide opportunities to Drew Liming, associate at
2 Freshfields Bruckhaus Deringer US LLP and J.D. class of 2015, and Elise Lopez, associate at
3 Freshfields Bruckhaus Deringer US LLP and J.D. class of 2018, to argue motions in court, to take and
4 defend depositions, and to examine witnesses at trial. At this early stage in the litigation, it is not
5 possible to identify specific motions that will be necessary or depositions that will be taken.

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8 Dated: March 11, 2021

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By: /s/ Louise H. Renne

10 **RENNE PUBLIC LAW GROUP**
11 LOUISE H. RENNE (SBN 36508)
lrenne@publiclawgroup.com
12 RUTH M. BOND (SBN 214582)
rbond@publiclawgroup.com
13 STEVE CIKES (SBN 235413)
scikes@publiclawgroup.com
350 Sansome St., Suite 300
14 San Francisco, CA 94104
Telephone: (415) 848-7200
15 Facsimile: (415) 848-7230

16 /s/ Julie Goldsmith Reiser

17 **COHEN MILSTEIN SELLERS & TOLL PLLC**
18 JULIE GOLDSMITH REISER (*pro hac vice*)
jreiser@cohenmilstein.com
19 MOLLY BOWEN (*pro hac vice*)
mbowen@cohenmilstein.com
20 LYZETTE WALLACE (*pro hac vice*)
lwallace@cohenmilstein.com
1100 New York Ave. NW, 5th Floor
21 Washington, DC 20005
Telephone: (202) 408-4600
22 Facsimile: (202) 408-4699

23 LAURA POSNER (*pro hac vice*)
lposner@cohenmilstein.com
88 Pine St., 14th Floor
24 New York, NY 10005
Telephone: (212) 220-2925
25 Facsimile: (212) 838-7745

26 *Counsel for Interim Lead Plaintiff the Employees'*
27 *Retirement System of Rhode Island*

28

/s/ Joseph H. Weiss
WEISSLAW LLP

JOEL E. ELKINS (SBN 256020)
jelkins@weisslawllp.com
9100 Wilshire Boulevard, #725 E
Beverly Hills, CA 90210
Telephone: (310) 208-2800
Facsimile: (310) 209-2348

JOSEPH H. WEISS (*pro hac vice*)
jweiss@weisslawllp.com
DAVID C. KATZ (*pro hac vice*)
dkatz@weisslawllp.com
JOSHUA M. RUBIN (*pro hac vice*)
jrubin@weisslawllp.com
KELLY K. MORAN (*pro hac vice*)
kmoran@weisslawllp.com
1500 Broadway, 16th Floor
New York, NY 10036
Telephone: (212) 682-3025
Facsimile: (212) 682-3010

*Counsel for Interim Executive Committee Plaintiff
Stephen Bushansky*

/s/ *Francis A. Bottini, Jr.*

BOTTINI & BOTTINI, INC.

FRANCIS A. BOTTINI, JR. (SBN 175783)
fbottini@bottinilaw.com
ALBERT Y. CHANG (SBN 296065)
achang@bottinilaw.com
ANNE BESTE (SBN 326881)
abeste@bottinilaw.com
7817 Ivanhoe Avenue, Suite 102
La Jolla, California 92037
Telephone: (858) 914-2001
Facsimile: (858) 914-2002

*Counsel for Interim Executive Committee Plaintiff
Sal Toronto*

/s/ Boris Feldman

**FRESHFIELDS BRUCKHAUS DERINGER US
LLP**

BORIS FELDMAN, (SBN 128838)
boris.feldman@freshfields.com
DORU GAVRIL, (SBN 282309)
doru.gavril@freshfields.com
DREW LIMING, (SBN 305156)
drew.liming@freshfields.com
2710 Sand Hill Road
Menlo Park, CA 94025

Telephone: (650) 618-9250

MARY EATON (*pro hac vice*)
mary.eaton@freshfields.com
601 Lexington Avenue, 31st Floor
New York, NY 10022
Telephone: (212) 277-4000

Counsel for Nominal Defendant Pinterest, Inc. and Individual Defendants Benjamin Silbermann, Jeffrey Jordan, Leslie J. Kilgore, Jeremy S. Levine, Gokul Rajaram, Fredric G. Reynolds, Evan Sharp, Todd Morgenfeld, and Michelle Wilson

1 Pursuant to General Order No. 45 Section X(B), all signatories concur in filing this stipulation.

2 Dated: March 11, 2021

By: /s/ Julie Goldsmith Reiser

3 Julie Goldsmith Reiser

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